IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 11049 of 2007(M)

PETITIONER:
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1. KANTHAPURAM A.P.ABOOBACKER MUSLIYAR, S/O.AHAMMED HAJI, KARANTHUR PO., KUNNAMANGALAM AMSOM, KARANTHUR DESOM, KOZHIKODE DISTRICT.

2. GENERAL SECRETARY, MARKAZZU SSAQUAFATHI SUNNIYA, A SOCIETY REGISTERED UNDER THE SOCIETIES REGISTRATION ACT, KARANTHUR P.O., KUNNAMANGALAM AMSOM, KARANTHUR DESOM, KOZHIKODE DISTRICT.

3. SECRETARY, SAMASTHA KERALA SUNNI YUVAJANA SANGHAM, MARKAZ COMPLEX, I.G.ROAD, MAVOOR, KOZHIKODE.

BY ADV. SRI.N.SUBRAMANIAM
SMT.USHA NARAYANAN
SRI.P.T.GIRIJAN
SRI.M.S.NARAYANAN

RESPONDENTS:
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1. THE DISTRICT COLLECTOR, KOZHIKKODE DISTRICT, P.O. CIVIL STATION, KOZHIKODE-32.

2. THE CORPORATION OF KOZHIKODE, CIVIL STATION P.O., KOZHIKODE-32, REPRESENTED BY ITS SECRETARY.

3. THE COMMISSIONER OF POLICE, KOZHIKODE CITY, KOZHIKODE.

4. THE ASSISTANT COMMISSIONER OF POLICE, KOZHIKODE NORTH, KOZHIKODE.

5. THE CIRCLE INSPECTOR OF POLICE,
NADAKKAVU POLICE STATION, NADAKKAVU,
KOZHIKODE.

6. THE SUB INSPECTOR OF POLICE,
NADAKKAVU POLICE STATION, NADAKKAVU,
KOZHIKODE.

7. RAJISH.K.K., S/O.RATNAKARAN,
KULANGARAKKANDY HOUSE, CIVIL STATION P.O.,
KOZHIKODE.

8. RAMESH, S/O.KUNHIKRISHNAN NAIR,
PILASSERRYPARAMBU, CIVIL STATION, P.O.KOZHIKODE.

9. VIJI.M.P., S/O.CHEKKUTTY,
MELEVALAPPIL HOUSE, CIVIL STATION P.O.,
KOZHIKODE.

BY ADV. SRI.P.K.RAMKUMAR
GOVERNMENT PLEADER SRI.K.C.SANTOSH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO.11049 OF 2007

APPENDIX

PETITOINERS' EXHIBITS:

EXHIBIT P1: COPY OF SANCTION GRANTED BY THE DISTRICT COLLECTOR TO FILL UP 9.46 ACRES OF LAND.

EXHIBIT P2: COPY OF SANCTION GRANTED BY THE DISTRICT COLLECTOR TO FILL UP 3.83 ACRES OF LAND.

EXHIBIT P3: COPY OF REPRESENTATION SUBMITTED TO RESPONDENTS 3 TO 6.

EXHIBIT P4: COPY OF ORDER PASSED BY THE GOVERNMENT EXEMPTING THE PROPERTY OF THE petitioner FORM ACQUISITION PROCEEDINGS.

EXHIBIT P5: COPY OF ORDER OF GOVERNMENT, EXEMPTINOG THE LAND OF OTHE petitioner FROM ZONING REGULATION.

EXHIBIT P6: COPY OF BUILDING PERMIT ISSUED TO THE petitioner TO CONSTRUCT A HOSPITAL BUILDING.

EXHIBIT P7: COPY OF ORDER OF THE CHIEF TOWN PLANNER GRANTING SANCTION TO THE petitioner FOR CHANGE IN LAND USE.

EXHIBIT P8: COPY OF ORDER IN WP(C).NO.2129/2006.

RESPONDENTS' EXHIBITS:

EXHIBIT R7(a): COPY OF NOTICE ISSUED BY REVENUE DIVISIONAL OFFICER DATED 17.2.2001.

EXHIBIT R7(b): COPY OF NOTICE ISSUED BY THE DISTRICT COLLECTOR CONCERNING A MEETING DATED 26.8.06.

EXHIBIT R7(c): COPY OF NOTICE ISSUED BY MASS petition CONTAINING THE SIGNATURES DATED 28.8.06.

/TRUE COPY/

PA TO JUDGE

P.R.RAMAN & K.HEMA, JJ.

W.P.(C).NO.11049 OF 2007

Dated this the 8th day of June, 2007

JUDGMENT

Raman, J.

The petitioner seeks for a writ of mandamus directing respondents 3 to 6 to render adequate police protection to him, his employees and servants for the purpose of filling the land as permitted by Exhibits P1 and P2 sanctions. The petitioner is the General Secretary of Markazzu Ssaquafathi Sunniya, a Society registered under the Societies Registration Act. He is also the Secretary of the Samastha Kerala Sunni Yuvajana Sangham. An extent of 19 acres of land was purchased by the said Society in Vengeri Village within the Kozhikode Corporation. Out of the said 19 cents of land, 9 acres 46 cents of land were set apart for constructing and starting an Engineering College and a Polytechnic. According to the petitioner, a substantial portion of the land was water logged and a portion of which is a garden land. The water logged area is unsuitable for cultivation as the water is saline. The petitioner, therefore, submitted an application before the District

Collector seeking permission to fill and develop 9 acres and 46 cents of land out of the 19 acres of land situated in various resurvey numbers mentioned in paragraph 2 of the Writ Petition. The District Collector eventually granted sanction for filling and developing the said land by his order dated 6.4.2002. Likewise, another extent of 3 acres and 83 cents of land was set apart for constructing and starting an International Public School and it was similarly situated, in respect of which also permission was sought for by separate application before the District Collector. The District Collector by Exhibit P2 order granted sanction as sought for. In Exhibit P1 it is stated that all the lands have been inspected and the above mentioned lands are water logged lands. Some lands have been developed into coconut garden lands taking channels and the enquiry revealed that there was no paddy cultivation in the area. The water logged lands are with salinity invasion and paddy cultivation is not possible in the area. It is also noticed that previously the petitioner had requested for permission for development of the adjacent lands which form part of the wet lands for the construction of building for a medical institution wherein also the application was got enquired through the Tahsildar, Kozhikode and based on the report received, it was found that the area was water logged and therefore paddy was not cultivated. The Principal

Agricultural Officer also reported that the land was not fit for paddy cultivation. It is reported that the land conversion would not effect cultivation elsewhere. The Executive Engineer, Minor Irrigation Division, Kozhikode also reported that filling up of land if carried out by providing adequate drainage facilities, would not create any flood in the area. The land, in respect of which permission was granted as per Exhibit P1, is stated to be the land in the same survey numbers or in the adjacent survey numbers of the lands mentioned earlier. It was found after referring Section 6(1) and (2) of the Kerala Land Utilisation Order that as per those provisions, the Land Utilisation Order will be attracted only when the land was under cultivation with any food crop for a continuous period of three years immediately prior to the commencement of the order or cultivated with any other food crop for a continuous period of three years from the orders of commencement of the order which prohibited to be converted except after obtaining a written permission from the District Collector/Revenue Divisional Officer. But since the land in question was not a paddy cultivation or any other food crop cultivation in the land/area, within the statutory period mentioned in the Land Utilisation Order, it was specifically found that the conversion of the land will not attract the provisions of the Kerala Land Utilisation Order and as such, no permission is required under

the said Order for the conversion of the land. Accordingly, sanction was accorded for the development (filling and levelling) of earth of the lands of total extent of 9.46.45 acres in various resurvey numbers mentioned in Exhibit P1. It is also ensured that the petitioner will construct proper drainage facilities for free flow of water and also will make arrangements not to aggravate the salination already experienced in the area. As already stated above, Exhibit P2 is a similar order in respect of another extent of 3.83 acres of land, and found that this land is also a part of larger extent of 19 acres of land and not cultivated paddy or any other crops within the period mentioned in Section 6(1) and (2) of the Kerala Land Utilisation Order and as such, no sanction is required under the said provision and therefore, sanction was accorded for development of the said land also subject to the condition that the petitioner shall construct proper drainage facilities for free flow of water and make arrangements not to aggregate the salination of water already experienced in the area. Thereafter, it is the case of the petitioner that when the work was started for filling up of land as sanctioned as per Exhibits P1 and P2, obstruction was caused and a complaint was made by the petitioner to respondents 3 to 6. Copy of the complaint is Exhibit P3. The petitioner makes mention of respondents 7 to 9, who according to him, had taken the leadership

for causing the obstruction. Respondents 7 to 9 appeared through counsel and filed a counter affidavit in the above case. In paragraph 3 of the counter affidavit, it is asserted that they are not creating any law and order problem as alleged in the Writ Petition. According to them, Exhibit P1 order is a one sided order passed in favour of the petitioner without impleading them or other interested parties. Hence, Exhibits P1 and P2 are not binding on them. The order, if any, passed by the Chief Town Planner as referred to in paragraph 6 of the Writ Petition is also not said to be binding on them. According to them, the area is a low lying one where roads will be submerged during monsoon time. It is further averred that the neighbouring area is the dream city project and 'Kalipoika' lake controlled by the Department of Tourism and Calicut Municipal Corporation. Hundred acres of land which is made mention in the Writ Petition is stated to be included in the above said project and though the respondents did not obstruct the petitioner's lorries, there is a popular agitation going on in that locality under the leadership of Kandal Samrakshana Samithi against the filling of water logged areas. They pray that this Writ Petition, under such circumstances, is to be dismissed.

2. The second respondent is the Corporation of Kozhikode represented by its Secretary. Though notice was served to the second respondent through the Standing Counsel, they have not

chosen to file any counter affidavit in the matter. Though the second respondent was specifically directed to file a statement, no such statement is filed as on date. It was also directed by another Bench of this Court on 12.4.2007 to the Government Pleader to file a statement on behalf of first respondent. But no statement is filed by the Government also till date. Thus, we find that only respondents 7 to 9 have filed a counter affidavit and the submissions and contents contained in the counter affidavit have already been dealt with in the above paragraph. In the reply affidavit filed, it is averred that though the Government was considering to acquire the lands in the locality for the purpose of the Tourism Promotion Council for setting up a tourist centre, the petitioner requested the Government to exempt the land in question from acquisition and the Government found that the Tourism Promotion Council did not want to set up a tourist centre therein and that no acquisition proceedings were in the anvil. The Government, through the Local Self Government, passed an order No.42391/D3/95 dated 16.2.1996, a copy of which is Exhibit P4, exempting from acquisition proceedings of the lands situated in Vengeri Village, belonging to the petitioner organisation. The petitioner also applied for exemption from zoning regulation and the Government by order No.G.O.(Rt).1193/2000/LSGD dated 20.3.2000, copy of which is Exhibit P5, granted exemption from

zoning regulation of the building proposed to be constructed by the organisation. Building permit was also issued in favour of the petitioner by the second respondent Corporation as evidenced by Exhibit P6. The Chief Town Planner also granted concurrence for change of the use of land as per Exhibit P7 order No.D1/2599/06/D.Dis. dated 20.4.2006. It is also submitted that though the District Collector passed Exhibits P1 and P2 orders, the Revenue Divisional Officer, by his order dated 19.1.2006 prohibited the petitioner from conversion of the land which was the subject matter of the challenge in W.P(C).No.2129 of 2006 and this Court as per Exhibit P8 order held as follows:

> "....As long as Exhibits P1 and P2 remain in force, if Exhibit P3 is meant to cover the items of properties, covered by Exhibits P1 and P2, then Exhibit P3 is unenforcible. It is declared so, the petitioner can ignore Exhibit P3."

3. The said order has become final. Though the Corporation rejected the application submitted by the petitioner for construction of the school and hostel, there was also a subject matter of this Writ Petition in W.P(C).No.8277 of 2007 and Exhibit P9 is the order. Though Exhibit P9 is marked in the reply affidavit, it is omitted to be produced. However, learned counsel for the petitioner handed over a copy of Exhibit P9 judgment and we perused the same. We noticed that the Kozhikode Corporation was the second respondent in the

said Writ Petition. The Calicut Development Authority was impleaded as the additional respondent. The challenge in the said Writ Petition was against Exhibit P4 order of the Corporation declining to grant permission for construction of a building. It is found that taking note of the order of the Chief Town Planner approving the plan and in view of Exhibit P1, the Writ Petition was allowed quashing Exhibit P4 referred to in the said Writ petition and directing the second respondent to grant permission for construction of school and residential building as per Exhibit P3, provided the plan is otherwise in order. It is averred that in the above facts and circumstances, the petitioner had done all that is legally required for setting up the educational institutions and all the attempts of the objectors are illegal and they cannot physically cause any obstruction stopping the petitioner from filling and developing the land.

4. The learned Government Pleader appearing for the State would submit that so long as Exhibits P1 and P2 orders are there in force, there cannot be any possible objection in filling up the land and it is also submitted that any obstruction caused for filling up of the land will be removed by the respondents police, if and when directed by this Court.

5. Heard learned counsel for the petitioner, Advocate Sri.P.K.Ramkumar, learned counsel appearing for respondents 7 to 9

and also the learned Government Pleader. Exhibits P1 and P2 are admittedly not cancelled by any proceedings known to law. So long as Exhibits P1 and P2 orders are in force, there cannot be any possible objection for filling up of the land which fact is taken note of by this Court in Exhibit P8 order while quashing the order passed by the Corporation of Kozhikode declining conversion of land. It would be seen that respondents 7 to 9 have filed a counter affidavit stating that they have not caused any obstruction. None of the respondents come forward to oppose the prayers made in the Writ Petition and in the above facts and circumstances, so long as Exhibits P1 and P2 are in force and so long as no prohibitory orders are issued by any statutory authorities or by any competent court of law, there cannot be any physical obstruction caused in carrying out the work pursuant to Exhibits P1 and P2. If there is any resistance on the part of the public against such filling, they could agitate in a peaceful manner. But as already stated above, when the petitioner wanted to fill up this land after obtaining sanction from the concerned authorities, the same cannot be prevented by physical force. We noticed that Exhibit R7(b) produced along with the counter affidavit is a notice issued from the collectorate inviting the parties for a meeting to consider their objection. The order which we passed now will not certainly stand in the way of the authorities in proceeding with the same and

coming to any decision in accordance with law. Though Exhibit R7(b) is issued as early as on 28.8.2006, we are not told as to whether any final decision is reached in the said matter. If no such decision is reached, the District Collector may proceed to dispose of the grievance as expressed in Exhibit R7(c) memorandum in accordance with law.

In the result, we direct respondents 5 and 6 to give necessary protection to the petitioner so as to enable him to carry out the work pursuant to Exhibits P1 and P2 unobstructed by respondents 7 to 9 or their associates, in case there is any physical obstruction from their side.

The Writ Petition is disposed of subject to what is stated above.

P.R.RAMAN, JUDGE

K.HEMA, JUDGE

vgs.